

MINUTES
ENERGY FACILITY SITE EVALUATION
COUNCIL OF WASHINGTON

March 1, 2004 - Regular Meeting
925 Plum Street S.E., Building 4, Room 308
Olympia, Washington, 1:30 p.m.

ITEM 1: CALL TO ORDER

CHAIR LUCE: The meeting will come to order. This is the regular meeting of the Washington State Energy Siting Council for Monday, March 1, 2004. Clerk, call the roll, please.

ITEM 2: ROLL CALL

EFSEC Council Members

Community, Trade & Economic Development

Richard Fryhling

Department of Fish & Wildlife

Chris Towne

Department of Natural Resources

Tony Ifie

Utilities and Transportation Commission

Tim Sweeney

Kittitas County

(via phone) Patti Johnson

Chair

Jim Luce

CHAIR LUCE: The Chair is present and I note the excused absence of the representative from the Department of Ecology.

MR. MILLS: And there is a quorum.

OTHERS IN ATTENDANCE

EFSEC STAFF AND COUNSEL

Allen Fiksdal

Mariah Laamb

Mike Mills

Ann Essko, AAG

Irina Makarov

Shaun Linse, Court Reporter

Adam Torem, ALJ

Pete Dewell, ALJ – via phone

EFSEC GUESTS

Bill LaBorde – NW Energy Coalition

David Reich – Ecology

Darrel Peoples – Kittitas Valley Wind Project

John Lane – CFE, Kittitas Valley Wind

Mark Anderson – CTED EP

Kirk Deal – Carpenter's Union

Karen McGaffey – Perkins Coie

Cindy Custer – BPA

NO. 3: APPROVAL OF MINUTES

CHAIR LUCE: The first item on the agenda is the approval of minutes of February 2, 2004. Are there any additions, corrections, deletions to the minutes of a substantive nature?

MS. TOWNE: There are additions and corrections, but of a non-substantive nature.

CHAIR LUCE: Do I have a motion to adopt those minutes?

MR. FRYHLING: I so move.

MR. IFIE: Second.

CHAIR LUCE: Call for the question. The question has been called. All in favor say aye.

COUNCILMEMBERS: Aye.

CHAIR LUCE: Thank you. The passage is unanimous.

ITEM NO. 4: ADOPTION OF PROPOSED AGENDA

CHAIR LUCE: The next issue is the adoption of the proposed agenda. Have Councilmembers had a chance to review that proposed agenda? Hearing no changes we will accept the agenda as proposed.

ITEM NO. 5: PROJECT UPDATES

<i>Kittitas Valley Wind Power Project</i>	<i>Irina Makarow, EFSEC</i>
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CHAIR LUCE: Project updates, Irina.

MS. MAKAROW: For the Kittitas Valley Wind Power Project the only update is that staff and our Administrative Law Judge, Adam Torem, will be working on the Council order resulting from the prehearing conference that was held in Ellensburg two weeks ago, and we expect to get that out either late this week or beginning of next. That is all that I have to report.

<i>Wild Horse Wind Power Project</i>	<i>Irina Makarow, EFSEC</i>
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CHAIR LUCE: Thank you. Wild Horse.

MS. MAKAROW: I've been in communication with Chris Taylor of Zilkha Renewable Energy, and it appears that the application for site certification for this project would be coming to the Council sometime this week or beginning of next.

<i>BP Cherry Power Project</i>	<i>Irina Makarow, EFSEC</i>
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CHAIR LUCE: Thank you. BP Cherry Point.

MS. MAKAROW: For the BP Cherry Point Project there is not a lot to report. The PSD comment period has closed, and I received an email from Mike Torpey of BP West Coast Products that BP will not be seeking another extension of that comment period. However, he did indicate to me that they are working on meeting directly with the administration of EPA Region 10 about the conditions in the proposed PSD permit. Also on BP Cherry Point, I included in your packets a bright green sheet, an email from Mike Torpey that gives the Council a status report as to their negotiations with Whatcom County. I think the next deadline for that will be March 15, when the County and the Applicant will tell EFSEC whether they have reached a conceptual agreement on the land use issues or not.

CHAIR LUCE: Good.

MS. MAKAROW: And that is all that I have to report.

<i>Columbia Generating Station</i>	<i>Mike Mills, EFSEC</i>
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CHAIR LUCE: Mike, what's going on with Columbia Generating Station?

MR. MILLS: Columbia Generating Station is operating at 100 percent, and they've been on line 242 continuous days.

<i>Chehalis Generation Facility</i>	<i>Mike Mills, EFSEC</i>
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MR. MILLS: I spoke with Duncan McCaig, the plant manager, earlier today. He said they were on line almost continuously during the month of February, and they're continuing to fabricate and install the noise reducing equipment. I have asked Duncan to come to your next Council meeting on the 15th to make a presentation on the noise improvement work that has been going on. Are there any questions on the two operating plants?

<i>Satsop CT Project</i>	<i>Mike Mills, EFSEC</i>
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MR. MILLS: For the Satsop Combustion Turbine Project you will recall at your last meeting we reported that the Council had received a request for a technical amendment to the Satsop Combustion Turbine Project site certification agreement involving clarification of water use provisions of that agreement. Council rules call for the Council to develop a schedule or a plan of action to process that request. Staff would propose that we issue a notice this week indicating that we've received the request. We'll publish in the local newspapers that we normally use for this project, and I believe we have a mailing list of somewhere between 200 and 300 people, and we will send it directly to those interested persons. We'll provide a written comment period through Monday, April 12, and schedule a public hearing for Monday, April 19. That coincides with your Council meeting on that date. If we are able to proceed, we would propose that the Council take action at the meeting on April 19.

CHAIR LUCE: Thank you.

MR. MILLS: If that seems reasonable, staff will proceed on that schedule.

CHAIR LUCE: Any questions from Councilmembers? Hearing none, what about Cowlitz Cogeneration Project that's cited as an extra item, Allen?

<i>Cowlitz Cogeneration Project – SCA Termination</i>	<i>Allen Fiksdal, EFSEC Manager</i>
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MR. FIKSDAL: As you recall from the last meeting, the Cowlitz Cogeneration Facility site certification agreement had a termination date of February 7, 2004, and we recommended that the Council take some action to recognize that the SCA has been terminated. In your packet or in your file of stuff there is a draft resolution I believe, Mike, is that correct?

MR. MILLS: Yes.

MR. FIKSDAL: And Mike will go over it with you.

MR. MILLS: It's a white sheet that's got Draft Resolution 308 on it. I will just try to summarize the portions of the resolution. As Allen indicated the site certification agreement for Weyerhaeuser Cowlitz Cogeneration Project terminated in accordance with the terms of the SCA on February 7, 2004. The action before the Council is staff is requesting you approve this resolution which will formally acknowledge that the site certification agreement and the state's authorization for Weyerhaeuser to construct and operate that project has terminated pursuant to the SCA terms. The body of the resolution provides some background information, cites the pertinent SCA requirement which specified if the construction on the project major components had not commenced by February 7, 2004, the SCA would terminate. Throughout the life of the SCA Weyerhaeuser did maintain the agreement, and it is a client in good standing. In late 2003, the company contacted staff and indicated that they were not pursuing the project. We were able to confirm that in early 2004. Last week I received an email indicating Weyerhaeuser had no other comments on the SCA termination and would appreciate follow up

after the Council meeting. So we prepared the resolution. The procedural status at the top of the second page recites your rules which state, termination of a site certification agreement except pursuant to its own terms is an amendment of the agreement. In this case, the SCA does provide for termination, so we will be handling it through a resolution believing that's the appropriate instrument to terminate that document. The conclusion portion of the resolution states, the Council concludes Weyerhaeuser has decided to abandon its efforts to construct the project; therefore, subject to the terms of the agreement and because construction did not start by February 7, 2004, the rights provided to Weyerhaeuser to construct and operate the project cease and the agreement is no longer in force effective that date. In accordance with Council rules, Weyerhaeuser's decision to not continue the project does not require the amendment to the SCA. Council acknowledgement of the termination of the project SCA by resolution is the appropriate administrative instrument to recognize that the agreement and the rights provided under the agreement ceased on February 7, 2004. The resolution section proposed, and I think that could be in terms of a motion, that the Council hereby acknowledges that pursuant to the terms of agreement, all rights provided to the Weyerhaeuser Company to construct and operate the project ceased on February 7, 2004, and the agreement terminated it on that date. So in accordance with the site certification agreement for the Cowlitz Cogeneration Project, staff would recommend that the Council approve Resolution 308 terminating that agreement.

MS. TOWNE: Mr. Chair, I move that the Council authorize its Chair and manager to execute Resolution No. 308 acknowledging termination of the Weyerhaeuser project.

MR. IFIE: I second.

CHAIR LUCE: Discussion? All in favor say aye.

COUNCILMEMBERS: Aye.

CHAIR LUCE: Done.

MR. MILLS: Thank you.

<i>Sumas Energy 2</i>	<i>Mike Mills, EFSEC</i>
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MS. TOWNE: We also have a chartreuse sheet that is the Sumas monthly progress report, and I didn't see them listed under the project updates. But it would appear that Canada is still sort of jerking them around. Can we light a fire under Canada?

CHAIR LUCE: No, I mean it's the National Energy Board. Karen, do you have any comments?

MS. McGAFFEY: Yes. We've received word that the National Energy Board is going to issue a statement on Thursday.

MS. TOWNE: Oh, great. Thank you.

MR. MILLS: We've asked Chuck Martin with Sumas Energy to come to your next Council meeting and report to you person to person on the status of that project.

MS. TOWNE: Thank you.

CHAIR LUCE: All right. That's a good catch.

ITEM NO. 6: EFSEC RULES

<i>Rules Review Discussion</i>	<i>Allen Fiksdal, EFSEC Manager</i>
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CHAIR LUCE: Now, we're onto the EFSEC rules discussion, Allen. I'm noted here as being the lead on this, but I would ask staff to maybe go over it. I know that last week you worked on reviewing the rules, and maybe you could tell us where you are on that. And then we have previously talked among ourselves about the need for a Council workshop, half day, to go over

the rules after staff has finished their evaluation and listen to their recommendations. So take it away, Allen.

MR. FIKSDAL: Yes. Mike, Irina, and I spent all day last Friday looking over the rules, and we have several suggestions or several changes that we would like to see. We still have some more work to do. Probably about another half day's work to look over the rules. What we would like to do is finish our work, incorporate all of our suggested changes into a draft of the rules, then we would provide the Councilmembers a single document. We can discuss how you want to receive this, but right now we have available the rules that show everybody's changes from the originals that has mass changes or we can show the compilation of what they might say.

We have Hedia's and Chris's edits that have been incorporated. We're going to have some edits of our own that's going to be incorporated. We want to give you a document probably at either the end of this week or beginning of next week with everything, so that you can hold a workshop and go over all the suggestions that have been made since whenever the last general discussion was on the rules. And then you will decide on what you would like to see, what you wouldn't, and go forward. So we didn't copy everything yet because we aren't quite done. We thought we'd just wait until we're done with our work until we give you anything as a comprehensive packet of rules and suggested changes. As far as scheduling a workshop, that would be up to you. We think we'll be done by either the end of this week or beginning of next week, so the end of the next week sometime or the week after, whatever your pleasure.

MS. TOWNE: I am going to be out of town from March 17th through the 27th.

CHAIR LUCE: Let's do it at the end of next week, if possible. Is Friday a good day or Thursday?

MR. IFIE: Friday.

MR. SWEENEY: Give me a date.

MS. TOWNE: 12th, Friday the 12th.

CHAIR LUCE: Okay.

MR. FRYHLING: How about the 16th?

MR. FIKSDAL: Monday, the 16th at our regular scheduled meeting?

MR. FRYHLING: The 16th is the Tuesday.

MR. FIKSDAL: Well, we have a regular scheduled meeting on Monday, the 15th.

MR. FRYHLING: Do you want it before then?

MR. FIKSDAL: I don't know. It's up to you.

MR. FRYHLING: I was just saying I drive over then.

MR. FIKSDAL: It might be easier for you to do it either in the morning or afternoon or after your Council meeting or substitute our workshop for your Council meeting.

CHAIR LUCE: Now there's a good idea.

MR. SWEENEY: You nailed that one.

MR. FRYHLING: Whatever you decide I'll work on it.

CHAIR LUCE: Let's hold a workshop and rule out the regular Council meeting. If there's any pressing matters to add, we would still be here for the agenda. So it would be Monday, March 15.

MR. SWEENEY: Yes.

MR. FRYHLING: You're going to do it on the 15th then?

MR. SWEENEY: We're just replacing our normal meeting.

MR. FRYHLING: If we do our meeting in 20 minutes like we did today.

CHAIR LUCE: Go ahead on March 15.

MR. SWEENEY: It would be in the afternoon.

MR. FIKSDAL: Let's start at 1:30.

MR. MILLS: Wait a minute.

MR. SWEENEY: Oh, you've got some things planned.

MS. TOWNE: Action items?

MR. MILLS: Not action items but informational reports.

MR. FRYHLING: We went through that part of the meeting in 15 minutes today.

MS. TOWNE: We could convene at say 10:00, 10:30 in the morning, work, take a lunch break, have the EFSEC meeting, and finish up after that.

MR. MILLS: I would like to have Sumas and Chehalis make their reports on that date.

MR. FRYHLING: Let's do it at 10:00 or 10:30 start.

MS. LAAMB: I will see if this room is still available. If it's available, we will try to do it here. I will look at ten o'clock.

CHAIR LUCE: I haven't read all the rules, but in talking to Allen and I think in talking to other Councilmembers my goal, I think your goal is let's keep it simple, let's keep it short, and let's provide certainty. And to the extent that there are particular aspects of the rules or features associated with the rules that pertain to the individual sites, we'll deal with that in a site certificate agreement. In other words, I don't want to write a -- I want us to end up with a constitution, not a Code Napoleon because I think that would not serve us well.

MS. TOWNE: I note that we have here expedited rule making CR 105 on the air rules. Could someone explain --

CHAIR LUCE: We will in just two seconds.

MS. TOWNE: Oh, okay.

CHAIR LUCE: So it will be March 15. We will get the time for sure, but in the morning.

MR. FIKSDAL: 10:30.

CHAIR LUCE: All right, 10:30. Let's put that down, and staff will provide the information prior to that for your review of the rules and your proposed changes. Now we have some documents available today; don't we, Mariah?

MS. LAAMB: We have some, yes. Basically these are the changed rules, so the revisions with two of them that were in purple which are before the final rules because I just didn't do both sets.

CHAIR LUCE: Purple is not the final rules. Purple is Hedia's suggestions.

MS. LAAMB: Right. But I mean as opposed to doing everything here, but I could have these available if you need.

MR. FIKSDAL: The three of us were working on this package.

MS. TOWNE: But you have already amended; therefore, reading this is not too helpful.

MR. FIKSDAL: Probably not too helpful, yes.

MS. TOWNE: I do have a couple things I picked up out of the minutes of the February 1 meeting. We talked about further discussions on need for power.

CHAIR LUCE: That's right.

MS. TOWNE: And with Ann's involvement because she wasn't at that meeting, and the second one was the CO2 and whether there's a need for a Council workshop specifically on that topic.

CHAIR LUCE: Let's get to CO2 in just a minute. On need for power I'm going to propose that we stick to the need for power standard that we had in our draft rules, and I think we can discuss that when we have our workshop.

MS. TOWNE: Right. Okay.

MR. FIKSDAL: Then we have the CO2.

CHAIR LUCE: The CO2 we'll talk about under legislation.

MR. FIKSDAL: Oh, under legislation. But we're continuing with the CO2 rule. It's going to be part of our package that we give you whether it may, you know, by March 11.

MS. TOWNE: The legislation will have passed or not by that date, and we will react accordingly.

MR. FIKSDAL: Right.

CHAIR LUCE: Right. We won't be writing a rule if the legislation passes.

MS. TOWNE: Well, we'll probably have to write a rule.

CHAIR LUCE: On the legislation, but not --

MS. TOWNE: Yes, not an independent rule.

<i>Air Rule Revision – CR 105</i>
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<i>Irina Makarow, EFSEC</i>

CHAIR LUCE: Air rules revision.

MS. MAKAROW: In your handouts you have a copy of a notice of expedited rule making, a CR 105, which was filed with the Code Reviser's Office, oh, about ten days ago, and these are the rule revisions that bring our adoption of Ecology rules and federal rules up to date and allow us to proceed with revision of the state implementation plan. So that's the reason that we decided to proceed by expedited rule making. We are only adopting existing rules and just making some small clarification on some of these sections. Hopefully if there are no comments and a hearing is not required, the Council will be able to adopt this revision after April 20.

MR. FIKSDAL: It just becomes effective.

MS. MAKAROW: It becomes effective. Are there any questions?

MR. FIKSDAL: If you don't have any questions on this, if you recall, Council did issue a CR 105 for repealing WAC 463-06-040 which was the regular scheduled meetings WAC where it used to say we meet twice a month and some other things. That became effective on February 24, so that section is now repealed.

MS. TOWNE: Good.

MR. FIKSDAL: We received no comments or questions or requests or anything.

ITEM NO. 7: EFSEC OPERATIONS

CHAIR LUCE: EFSEC Operations. Allen, you have a sheet here.

MR. FIKSDAL: I have a sheet, whatever color that is, goldenrod or gold or yellowish something. Last meeting I gave you a bigger sheet that kind of went through all the budget items and trying to figure out this has to do with developing a list and/or a policy on what budget issues may be attributable or what budget items may be attributable or not attributable to either application processing, potential site studies for compliance monitoring. At that meeting the Council wanted a schedule for implementation of EFSEC operations, and I'll put policy in quotes, and that's what this is, is a schedule. The first step would be March to identify EFSEC member and staff work activities, go through and keep working on each of those budget items trying to identify them. In April we can categorize activities as attributable or not attributable, one of those or the other. It may then start drafting I don't know if it's going to be an official policy, but we'll call it a "policy" on which work activities are attributable and are not attributable. In June you would finalize the policy. In July Irina, Mike, and I will start working on developing a budget for any of those work items that are not attributable and that you want to carry into a budget. Then by August I think we have to have that ready to at least incorporate

into the next biennium budget material that we need to give to CTED. So that's the schedule that I have. Do you have any questions?

MR. IFIE: Good work.

CHAIR LUCE: Thank you.

ITEM NO. 8: OTHER

CHAIR LUCE: Other, legislation. For those of you who have been following CO2 you're aware that House Bill 3141 passed the House, was referred to the Senate Committee on natural resources. Some slight amendments were made. One change was also made that continues to be worked on regarding the savings clause, but the bill was reported out of the committee on natural resources I think by nine to two or seven or two. There were two dissenting votes. The rest of the committee supported the bill. It's now in Senate rules.

MR. FIKSDAL: What you have is I just pulled this off the internet off the legislative site this morning, so this is what was reported to the rules.

CHAIR LUCE: The Governor's office continues discussions with some members of the caucus regarding savings clause change, and I think that will be settled here in the not too distant future. And then hopefully we'll get it out of rules and onto the Senate floor to the vote. And there will be some changes, although I'm not sure how the process works. But I'm told if the changes aren't considered of a highly substantive nature that it could be concurred in by the House without the conference report. I guess we don't appoint conferees in the typical sense of the word.

MR. SWEENEY: If the House doesn't concur, then we have a choice of letting the bill die or holding a conference.

CHAIR LUCE: I'm anticipating the House will concur. I'm optimistic the House will concur. Maybe that's a better way to state it. So take a look at it. I'll keep you posted as the events unfold. They'll all unfold one way or the other in the next two weeks. And if this bill becomes law, then the CO2 rule that we currently have pending before us will not be adopted; however, there are features of this bill which will need some work, and that's dealt with --

MR. SWEENEY: That's why we use reasonable time in there somewhere.

CHAIR LUCE: That's dealt specifically with respect to costs by saying that the costs incurred in implementing and administering the chapters will be assessed against the applicants and holders of the site certification agreement subject to the requirements of this chapter. So if you're not subject to the requirements of this chapter, then you're not going to pay the costs of rule making. So anyway that's where she sits. It means going hand in hand to Bonneville Power Administration to get the money to implement our CO2 or CTED. There's at least two opportunities over there, two money pots over here on the left. We'll move ahead, and we'll find a way to get this implemented. So any questions about that?

MR. FIKSDAL: That's the only substantive legislation. There's still some legislation for rules in general that are in the legislature. House Bill 2380 that's requiring the Governor's signature on significant legislative rules is still alive. There's the meeting notice by fax or email is still alive. Thank goodness. And some other legislative rules stuff.

MR. SWEENEY: Transmission bill died.

MR. FIKSDAL: Transmission bill died.

MS. TOWNE: Research portfolio died.

MR. FIKSDAL: Research died. So these are the only two things that affect us or the only one thing, the CO2 legislation that is possible stuff regarding rules in the legislature. We didn't hear from David. Do you have anything to report on what you're doing?

MR. REICH: Not particularly.

MR. FIKSDAL: You don't have to. Did you want to say something?

MR. REICH: No. I guess the only thing I want to say is obviously I've been following the bill too, and I'm trying to write the report in a way that everything is easily extractable and insertable, since it's changing so rapidly. So that's all I've been working on.

MR. FIKSDAL: I have one other.

CHAIR LUCE: Please.

MR. FIKSDAL: Today is Mike's birthday.

CHAIR LUCE: I thought it was tomorrow. But if it's today, this is really good. So are we going to sing?

MR. FIKSDAL: Go ahead. I just think we should wish Mike a happy birthday.

COUNCILMEMBERS: Happy Birthday, Mike.

ITEM NO. 9: ADJOURN

CHAIR LUCE: Great. Any comments from the public with respect to the business pending before EFSEC? Hearing no comments, hearing nothing else to be discussed today, the meeting is adjourned.

(Whereupon, the Council meeting was adjourned at 2:02 p.m.)